

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:90-CR- 00154-RE-1

Plaintiff,

OPINION AND ORDER

v.

CESAR CAZAREZ-PAYAN,

Defendant.

REDDEN, Judge:

Defendant Cesar Cazarez-Payan moves to modify an imposed sentence. Cr. 343. He argues that he was unlawfully sentenced to 328 months imprisonment on Count 1 when the maximum sentence was 20 years (240 months). Def' Motion, p. 8.

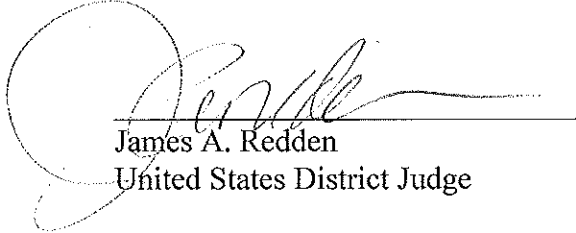
Defendant's Motion is actually a *habeas* claim under 28 U.S.C. § 2255. *See Lorentsen v. Hood*, 223 F.3d 950, 953 (9th Cir. 2000); *Tripati v. Henman*, 843 F.2d 1160, 1162 (9th Cir. 1988). This is defendant's sixth motion attacking his conviction. Cr. 145, 158, 263, 321, 331. This

court lacks jurisdiction to consider this Motion because defendant failed to obtain prior certification from the court of appeals as required by 28 U.S.C. § 2244(b)(3).

Defendant's Motion (Cr. 343) is dismissed without prejudice.

IT IS SO ORDERED

CR 343 WR
Dated this 1 day of January, 2013.



James A. Redden
United States District Judge